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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 407

THE FIRST NATIONAL CITY BANK OF NEW YORK,

Petitioner,

—against—

SOUTHWESTERN SHIPPING CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

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Societe Filature v. *Epoux Heynen-Bintner*, Pasierisie Luxeinbourgeoise (1957) pp. 36-39 (Tribunal d'Arrondissement de Luxembourg, Feb. 1, 1956) 20

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White v. *Roberts*; 33 Hong Kong Law Reports pp. 231-282 (Hong Kong Supreme Court, 1949) 20, 22

Other Authorities Cited

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Articles of Agreement of the International Monetary Fund ("Bretton Woods Agreement") (60 Stat. 1401) United States Statutes at Large Volume 60, Part 2, 79th Congress 2d Session, 1946, Pages 1401-1439.
4, 6, 13, 14, 15, 21, 23, 46a, 47a, 48a, 49a, 50a

Article VIII, Section 2(a) 13, 49a

Article VIII, Section 2(b),
3, 4, 5, 14, 17, 20, 21, 22, 49a

Bülck, Hartwig, Dr., *Jahrbuch für Internationales Recht*, Vol. 5, Part I (1955), pp. 113-23 20

Gold, "*Article VIII, Section 2(b) of the Fund Agreement and the Unenforceability of Certain Exchange Contracts: A Note*", International Monetary Fund Staff Papers, Volume IV, No. 2, February 1955 17

House Report No. 629, 79th Cong. 1st Sess. (1945) 14

Meyer, "*Recognition of Exchange Controls After the International Monetary Fund Agreement.*", 62 Yale Law Journal 887, 894-895, 908 (1953) 17

Schnitzer, "*The Legal Interpretation of Article VIII, Section 2(b) of the Bretton Woods Agreement*", International Law Association, Report of the 47th Conference, Dubrovnik (1956) p. 302 17

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Senate Report No. 452, 79th Cong. 1st Sess. (1945) 14

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THE FIRST NATIONAL CITY BANK OF NEW YORK,

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—against—

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of New York, County of New York, entered on July 31, 1959 in favor of Respondent against Petitioner in accordance with the remittitur of the Court of Appeals of the State of New York dated July 8, 1959. Under the usual practice of New York, the Court of Appeals has remitted the record in the case to the Supreme Court, New York County.

Since the institution of the action the name of petitioner has been changed from The National City Bank

of New York to The First National City Bank of New York.

Reference to Opinions Below

The opinion of the Supreme Court, New York County (the trial court) is officially reported at 11 Misc. 2d 397 and is unofficially reported at 173 N. Y. S. 2d 509. A copy of that opinion is appended hereto as Appendix A.

The judgment and order of the Supreme Court, New York County were unanimously affirmed by the Appellate Division of the Supreme Court, First Judicial Department without opinion. The memorandum of affirmance of the Appellate Division is reported officially at 6 App. Div. 2d 1036, and is reported unofficially at 178 N. Y. S. 2d 1019. It is appended hereto as Appendix B.

The opinion of the Court of Appeals of the State of New York has not yet been reported either officially or unofficially. A copy of the unrevised and uncorrected opinion of that Court (designated by the Court as "Not for Publication") is appended hereto as Appendix C.

Statement of Jurisdiction

The jurisdiction of this Court is invoked under that portion of Title 28 U. S. C. Section 1257(3), which reads as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could

be had, may be reviewed by the Supreme Court as follows:

* * * *

"(3) By writ of certiorari . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

The final judgment of the Supreme Court, New York County which is sought to be reviewed is dated July 31, 1959 and was entered on the same date. A copy of this judgment is appended hereto as Appendix D. It was based upon the remittitur of the Court of Appeals of the State of New York which is dated July 8, 1959 and which was entered on that date. Under the New York practice a judgment is not rendered by the highest court—the Court of Appeals. No application for a rehearing was made.

The federal question sought to be reviewed was first raised by petitioner in its pleading prior to trial. In substance this affirmative defense pleaded that plaintiff was suing to enforce an exchange contract which violated the foreign exchange control laws of Italy; that the exchange contract was illegal and void under the laws of Italy; and that as such it was

". . . contrary to the public policy of the United States of America and the State of New York and unenforceable in the Courts of either." (R. 77)

The precise federal question at issue was the meaning and application of the first sentence of Article